

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 412 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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HIMATSINGH RAIJIBHAI CHAVDA

Versus

UNION OF INDIA & ORS.

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Appearance:

MR PC MASTER for Petitioner

None present for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/12/96

ORAL JUDGEMENT

1. Heard learned counsel for the petitioner. The petitioner, a security guard of CISF, unit Baroda, filed this writ petition challenging thereunder the order of the Group Commandant, Central Industrial Security Force, Bombay dated 19-1-1984 under which he was dismissed from the services after holding a departmental inquiry.

2. In the order it has been mentioned that if the

petitioner is aggrieved of this order he may prefer an appeal to the Deputy Inspector General, (W/Zone) CISF, Bombay within 30 days from the date of receipt of the order. Though the order was appealable, but the petitioner instead of approaching to the appellate authority has filed this writ petition before this court on 27th January, 1984. An objection has been taken by the respondent in the reply which has been filed in the year 1984 that the petitioner has an alternative remedy against the order. The petitioner in this Special Civil Application has not given out that the right of appeal is not available to him.

3. The counsel for the petitioner has given out the justification for filing of the Special Civil Application directly before this court in the form that the petitioner was in possession of the Government Quarter and after his dismissal from the services, the respondent would have taken the forceful possession in case the court had not protected him. So the writ jurisdiction has been availed of by the petitioner only to get interim relief against his eviction from the Government premises. On 30th January, 1984, this court has protected the petitioner from eviction of the premises, but it is not in dispute that this stay order comes to an end by efflux of time and that urgency which has been shown was no more there after 17th March, 1984. The counsel for the petitioner has also admitted that the petitioner has vacated the premises long back. Whatever justification which the petitioner had to approach this court by passing the remedy of appeal no more survives and the petitioner should be now asked to go before the appellate authority against the impugned order. Where remedy of appeal is provided against the impugned order then the petitioner has to avail of the said remedy rather than to come before this court under Article 226 of the Constitution of India. The litigants should be discouraged to approach this court directly in the matter where he has a statutory remedy available against the impugned order.

4. There is yet another reason not to entertain this writ petitioner and to relegate the petitioner for remedy of the appeal. In the order impugned in this writ petition it is very specifically stated that the petitioner if aggrieved of the said order he may prefer an appeal before the authority given therein, but the petitioner has chosen to approach this court. Secondly this court sitting under Article 226 of the Constitution has a very limited power of judicial review in the matter of punishment to be given to a delinquent employee for a

proved misconduct whereas the appellate authority has a much wider power.

5. In this case one of the contentions made by the learned counsel for the petitioner is that the punishment of dismissal is highly excessive and disproportionate to the guilt proved against the petitioner. This question can be gone into effectively by the appellate authority and not by this court. The counsel for the petitioner has no objection in case he has been relegated to the appeal forum, but his apprehension is that the appellate authority may dismiss his appeal on the ground of limitation. I do not find any justification in this apprehension of the petitioner. When this court is relegating the petitioner to the remedy of appeal then the appeal has to be decided on merits and not on the question of delay. It is a settled law that where the petitioner has a right of appeal against the impugned order then he has to avail of the said right and writ petition should not be entertained. Reference in this respect may have to the decision of the Supreme Court in the case of State of Goa vs. M/s. A.H. Jaffar & Sons reported in AIR 1995 SC 333. In para no.3 of the judgment the Supreme Court has held as under:

The appeal has been argued at length.

Shri Siraj Sait has attempted to support the judgment with industry and precision. But it does not appear necessary to decide whether the finding recorded by the High Court that the order of Commissioner being administrative in nature it could be reviewed by the State Government nor it is necessary to decide whether the Minister could exercise any power where the grant of lease is regulated by the Statute as in our opinion the remedy of revision having been provided by Sec.30 of the Act, the proper course for the respondent was to approach the Central Government and not the High Court. Learned counsel for the respondent expressed apprehension that the period for limitation provided in Rule 54 of the Minerals Concession Rules, 1960 having expired, the revision might not be entertained. The proviso to the rule, however, empowers the revising authority to condone delay if it is satisfied that the revision could not be presented for sufficient cause within time. Since the respondent was pursuing its remedy in High Court bona fide, it would be sufficient cause to condone the delay and we trust that the revision if preferred within four weeks from

today shall not be dismissed as being barred by time.

6. In the result, this Special Civil Application fails and the same is dismissed only on the ground of availability of alternative remedy. However, it shall be open to the petitioner to file an appeal against the order impugned in this Special Civil Application before the appellate authority as mentioned therein within a period of one month from today. In case the appeal is filed by the petitioner within the aforesaid period, the appellate authority shall decide the same on merits and it shall be open to the petitioner to raise all objections and grounds against the order impugned in this Special Civil Application. It is an old matter and it is expected of the appellate authority to decide the appeal of the petitioner, if filed within stipulated period as aforesaid, within a period of six months from the date of receipt thereof. Rule discharged.

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